REG WHITSON

IBLA 80-642 Decided May 26, 1981

Appeal from decision of the Nevada State Office, Bureau of Land Management, declaring the Dun placer mining claim abandoned and void. N MC 6278.

Dismissed.

1. Appeals -- Rules of Practice: Appeals: Notice of Appeal -- Rules of Practice: Appeals: Timely Filing

   Where a person moves from his record address and does not apprise BLM of a forwarding address, and a copy of a BLM decision affecting him is mailed to this last address of record and returned by the postal service as undeliverable, the decision is considered to have been "served" on him as of the date it is returned to BLM. 43 CFR 4.401(c). Accordingly, the deadline for filing a notice of appeal is 30 days after the date the decision is returned to BLM, and an appeal filed after that date is properly dismissed as untimely.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

   The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

APPEARANCES: Reg Whitson, President, Min-Ad, Inc., pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Reg Whitson has appealed from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated February 5, 1980, declaring the Dun placer mining claim abandoned and void for failure to file an affidavit of annual assessment work or notice of intention to hold the claim by December 30, 1978, as required by 43 CFR 3833.2. 1/ Mr. Whitson is apparently attempting to perfect an appeal as to the Dun claims #1, #2, #3, and #4, N MC 55558 through N MC 55561, which were originally located in 1970. The record shows that BLM has not yet issued an adverse action against these claims and, consequently, these claims are not properly the subject of an appeal before this Office.

[1] Appellant contends that his predecessor, Harry Williams, did not actually receive decision letters of November 28, 1979, and February 5, 1980, even though change of address notices had been filed at the Greely, Colorado, post office. We note that, in addition to changing his address at the post office, Williams was responsible for keeping BLM apprised of any change in his address of record. One who deals with the Department has an obligation to keep it informed of an address at which communications from the Department will reach him, and where he fails to provide a correct, current address of record, he must bear the consequences of this failure. Nicky Nickoli, 43 IBLA 296 (1979); James W. Heyer, 2 IBLA 318, 320 (1971). Under the regulations governing communications by mail, 43 CFR 1810.2, where BLM sends a communication to any person by mail, that person will be deemed to have received the communication if it was delivered to this last address of record regardless of whether in fact it was received by him.

BLM's mailing of the decision of February 5, 1980, to the last address of record gave appellant constructive notice of the decision and he was constructively served with this decision on February 11, 1980, the date the postal service returned the decision to BLM as undeliverable.

Accordingly, appellant had until March 12, 1980, 30 days following this date of service, to file a notice of appeal with BLM. 43 CFR 4.411(a). When this appeal was filed May 15, 1980, it was clearly untimely, and must properly be dismissed as the Board is without jurisdiction to consider it. 43 CFR 4.411(b); Ralph Dickinson, 39 IBLA 258, 263 (1979); Jerrold R. Cooley, 32 IBLA 387, 388 (1977); Lavonne E. Grewell, 23 IBLA 190, 191 (1976).

[2] However, even if we were further to consider this appeal on the merits, appellant would not prevail. Section 314(a)(1) and (2) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C.

1/ Harry Williams, the original locator of the Dun placer mining claim and the party who was named in the decision below, has conveyed the claim to the company, Min-Ad, Inc., a company of his own creation, and has been succeeded as president of the company by Reg Whitson.

§ 1744(a)(1) and (2) (1976), and the pertinent regulation, 43 CFR 3833.2-1(a), require that the owner of an unpatented mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which the claim was located, file with BLM evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim. Failure to file the required instrument is conclusively deemed to constitute an abandonment of the mining claims under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a). The Dun placer mining claim was located after October 21, 1976, on June 20, 1977, and recorded with BLM July 8, 1977, under serial No. N MC 6278. Thus, one or the other of the documents had to be filed prior to December 31, 1978, the year following the calendar year in which the claim was located, in order to satisfy the requirements of the law.

The statutory and regulatory mining recordation requirements are mandatory and failure to comply therewith must result in a finding that the claims are void. Robert Alameda, 48 IBLA 178 (1980); John Walter Chaney, 46 IBLA 229 (1980). There is no evidence in the record to substantiate appellant's assertion that the necessary affidavits of assessment work were timely filed with BLM by Williams. Nor has appellant provided anything with his appeal to verify the filing other than the indication of the possibility that the documents may have been lost or misplaced.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is dismissed. 2/

Anne Poindexter Lewis
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Gail M. Frazier
Administrative Judge

2/ We have been informed that Whitson has subsequently relocated these claims. As we have noted in the past, however, a relocation does not moot an earlier appeal. Should an appeal be successful a claimant would have the right to claim through the earlier location and also to credit for prior assessment expenditures should he or she at one point decide to proceed to patent. See generally R. Gail Tibbetts, 43 IBLA 210 (1979). Of course, nothing in this decision in any way passes on these new locations.